

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

**STEVE W. ARCHER,**

**Plaintiff,**

**V.**

**No. 1:21-cv-00346-JD-SLC**

**KAUFMANN PROPERTY  
MANAGEMENT CORP.,**

**Defendant.**

## OPINION AND ORDER

Before the Court is Defendant's motion for entry of a stipulated protective order, seeking the Court's approval and entry of a proposed protective order agreed to by the parties pursuant to Federal Rule of Civil Procedure 26(c). (ECF 18). Because the proposed order (ECF 18-1) is overly broad, the motion will be denied without prejudice.

Rule 26(c) allows the Court to enter a protective order for good cause shown.<sup>1</sup> See *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 946 (7th Cir. 1999). A protective order, however, must only extend to “properly demarcated categor[ies] of legitimately confidential information.” *Id.*; see *MRS Invs. v. Meridian Sports, Inc.*, No. IP 99-1954-C-F/M, 2002 WL 193140, at \*1 (S.D. Ind. Feb. 6, 2002) (rejecting proposed protective order because categories of protected information were overly broad and vague); *Cook, Inc. v. Boston Sci. Corp.*, 206 F.R.D. 244, 248-49 (S.D. Ind. 2001) (same).

<sup>1</sup> “[T]he same scrutiny is not required for protective orders made only for discovery as for those that permit sealed filings.” *Containment Techs. Grp., Inc. v. Am. Soc’y of Health Sys. Pharmacists*, No. 1:07-cv-997-DFH-TAB, 2008 WL 4545310, at \*3 (S.D. Ind. Oct. 10, 2008); *see also Baxter Int’l, Inc. v. Abbot Labs.*, 297 F.3d 544, 545 (7th Cir. 2002) (“Secrecy is fine at the discovery stage, before the material enters the judicial record. But those documents, usually a small subset of all discovery, that influence or underpin the judicial decision are open to public inspection unless they meet the definition of trade secrets or other categories of bona fide long-term confidentiality.” (citations omitted)). Because the proposed order lacks language limiting it to the discovery period, and in fact contemplates in-Court use of protected information subject to safeguards (ECF 18-1 § V.F), it requires a higher level of scrutiny.

Here the proposed order fails to set forth narrow, demarcated categories of legitimately confidential information. Instead it allows a party to designate material confidential if it “constitutes or includes, in whole or in part, confidential or protected information such as trade secrets, non-public research and development, commercial or financial information, or other information that may cause harm to the producing party or a nonparty.” (ECF 18-1 § II). The proposed order adds that “[t]he parties anticipate production of the following categories of protected information: confidential personnel records, medical records, and non-public commercial or financial information.” (*Id.*).

Generic terms such as “confidential,” “protected,” “commercial” or “other information that may cause harm” are not narrow, demarcated categories. See *Filter Specialists, Inc. v. Hendi*, No. 3:08-cv-365, 2008 WL 4367594, at \*2 (N.D. Ind. Sept. 17, 2008) (rejecting the parties’ proposed categories of “proprietary, confidential, or of a commercially sensitive nature,” explaining that “[f]or the proposed document to comport with circuit precedent and the Federal Rules, the parties need to limit this language of the order to a more ascertainable standard to prevent a blanket protective order”). Nor does the parties’ statement that they “anticipate” production of certain categories of information assure the Court that protection will be limited to just those categories, which in any event are also overly broad.

The use of the “non-public” qualifier in the protected categories does not cure the problem. “‘Non-public’ is too vague. If it means only that the information is not available to the general public, then it is insufficient because the information must be kept secret from and not be readily ascertainable by potential competitors.” *Cook*, 206 F.R.D. at 248. “If the parties seek non-trade secret protection for any . . . information, they must present reasons for protection and criteria for designation other than simply that the information is not otherwise publicly

available.” *Id.* at 249. “They must describe a category or categories of information and show that substantial privacy interests outweigh the presumption of public access to discovery material.” *Id.* For material to be protected, it “must give the holder an economic *advantage* and threaten a *competitive* injury—business information whose release harms the holder only because the information is embarrassing or reveals weaknesses does not qualify for trade secret protection.” *Id.* at 248. Accordingly, “merely asserting that a disclosure of the information ‘could’ harm a litigant’s competitive position is insufficient; the motion must explain how.” *Shepard v. Humke*, IP 01-1103-C-H/K, 2003 WL 1702256, at \*1 (S.D. Ind. Mar. 28, 2003) (citing *Baxter Int’l, Inc.*, 297 F.3d at 547).

Also, as to personnel records, “not all information in an employee’s personnel file is considered private.” *Little v. Mitsubishi Motor Mfg. of Am., Inc.*, No. 04-1034, 2006 WL 1554317, at \*4 (C.D. Ill. June 5, 2006). “Indeed, there is nothing confidential about an employee’s job title, job description, hiring date, or work assignment and location.” *Id.*; *see also Smith v. City of Chi.*, No. 04 C 2710, 2005 WL 3215572, at \*2 (N.D. Ill. 2005). More specifically as to Plaintiff’s own personnel, medical, or financial information, Plaintiff “must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials.” *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000). While “many litigants would like to keep confidential the salary they make, the injuries they suffered, or the price they agreed to pay under a contract, . . . when these things are vital to claims made in litigation they must be revealed.” *Baxter Int’l, Inc.*, 297 F.3d at 547; *see, e.g., Brown v. Auto. Components Holdings, LLC*, No. 1:06-cv-1802-RLY-TAB, 2008 WL 2477588, at \*1 (S.D. Ind. June 17, 2008) (denying leave to file the plaintiff’s personnel and medical information under seal where the information was central to the case).

An additional issue merits mention. While the Order will remain in force after termination of the suit as set forth in Section VII.B, the Court will not retain jurisdiction over the Order, as the Court is unwilling to enter a protective order that suggests it retain jurisdiction of any kind after resolution of the case. *See EEOC v. Clarice's Home Care Serv., Inc.*, No. 3:07-cv-601 GPM, 2008 WL 345588, at \*2 (S.D. Ill. Feb. 7, 2008) (encouraging the parties to make a contractual agreement among themselves for the return of sensitive documents without court oversight); *see also Large v. Mobile Tool Int'l, Inc.*, No. 1:02-CV-177, 2010 WL 3120254, at \*1 (N.D. Ind. Aug. 6, 2010).

Finally, the Seventh Circuit Court of Appeals has made it clear that a protective order must be “explicit that either party and any interested member of the public can challenge the secreting of particular documents.” *Cincinnati Ins. Co.*, 178 F.3d at 946. The proposed order, however, does not contain this language. “[T]he public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding.” *Id.* at 945.

For these reasons, the Court DENIES Defendant’s unopposed motion for entry of a stipulated protective order (ECF 18) without prejudice and declines to enter the parties’ proposed agreed stipulated protective order (ECF 18-1). The parties may submit another motion with a revised proposed protective order consistent with the requirements of Rule 26(c) and Seventh Circuit caselaw.

SO ORDERED.

Entered this 13th day of January 2022.

/s/ Susan Collins  
Susan Collins  
United States Magistrate Judge